

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

GARRY GREGG,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. 2:07-CV-01131-WKW
)	[wo]
J. WALTER WOODS, JR., <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

This case is before the court on plaintiff's Emergency Motion for a Temporary Restraining Order ("TRO"), which defendants removed from state court; there is no complaint before the court. On December 21, 2007, plaintiff filed the motion for a TRO in Circuit Court of Montgomery County, Alabama, and stated he would file a complaint on December 26, 2007. (Emergency Motion ¶ 9.) When the defendants removed the case on December 28, 2007, they asserted that "[c]opies of all processes, pleadings, and orders are attached hereto." (Notice of Removal ¶ 5.) The court finds that remand is proper because this action was not removable as no complaint has been filed.

A district court shall remand a case "[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction." 28 U.S.C. § 1447(c). The removal statute provides that "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants." 28 U.S.C. § 1441. A civil action "is commenced by filing a complaint with the

court.” Fed. R. Civ. P. 3. ““Fundamental to the right of removal is the requirement that there be a case to remove.”” *Bradigan v. Office & Prof’l Employees Int’l Union, Local 153, AFL-CIO*, 879 F. Supp. 7, 9 (N.D.N.Y. 1995) (quoting *MHM Sponsors Co. v. Permanent Mission of Pak.*, 672 F. Supp. 752, 753 (S.D.N.Y. 1987)). Here, there is not a complaint before the court, only a motion, which means that this matter is not removable.

It is ORDERED that this case is REMANDED to the Circuit Court of Montgomery County, Alabama. The Clerk is DIRECTED to take appropriate steps to effect the remand.

DONE this 3rd day of January, 2008.

/s/ W. Keith Watkins
UNITED STATES DISTRICT JUDGE